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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Review of the Commission's Regulations Concerning Television Broadcasting	)))))	MM Docket No. 91-221

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF ABRY COMMUNICATIONS

ABRY Communications hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 92-209, released June 12, 1992) (the "NPRM").

I. INTRODUCTION

ABRY Communications is comprised of five television broadcast stations -- WNUV-TV, Baltimore, Maryland; WSTR-TV, Cincinnati, Ohio; KSMO-TV, Kansas City, Missouri; WCGV-TV, Milwaukee, Wisconsin; and WTTO(TV) Birmingham, Alabama. Each station is licensed to a different entity. All five ABRY stations are independent, UHF stations; two carry programming from Fox Television. For ease of exposition these comments will refer to these related business entities as "ABRY" and their broadcast stations as the "ABRY stations."

ABRY is a relatively new entrant in the television business. It was created by Mr. Andrew Banks and Mr. Royce Yudkoff in 1988 for the acquisition of WNUV-TV, Baltimore. This transaction was completed on March 17, 1989. Messrs. Banks and Yudkoff have managed ABRY since its inception.

Three of the five stations were unprofitable and the other two were minimally profitable when ABRY acquired them. Each was distressed or semi-distressed, and several were close to suspending operations. WSTR-TV (formerly WIII) and KSMO-TV (formerly KZKC) were in Chapter 11 Bankruptcy proceedings for over two and one-half years prior to their acquisition by ABRY.

ABRY has invested very substantial sums in facilities improvements at each station. ABRY purchased and installed an upgraded, new antenna and a new transmitter for WNUV-TV. KSMO-TV received a new antenna. WTTO acquired an existing tower to provide the station with a stronger, clearer signal. WSTR-TV is now operating from a newly constructed, 954-foot tower which ABRY built. As a result of these improvements, WSTR-TV, for the first time, is able to provide a City Grade signal to all viewers in the Cincinnati market. Such investments serve the public interest. Many additional non-cabled households now receive an additional free broadcast signal. In addition, cable TV systems in outlying areas can now receive WSTR-TV's signal, and retransmit the station's programming to their viewers.

In addition to transmission system improvements, ABRY also has invested substantially in local origination equipment. Examples of such investments include new studios at WTTO and KSMO-TV, and camera, editing and production equipment at every station.

These investments allow ABRY's stations to produce and broadcast programs such as the monthly Mayor's Show and 54 Space Corp. at WNUV-TV, Kids Club programming at KSMO-TV and specials about such topics as Teenage Pressures at WTTO and Drug Free Youth at WCGV-TV. Local vignettes and PSA's produced for local groups are periodically done at all ABRY stations. ABRY stations have broadcast local events never before broadcast in their communities -- including the Fourth of July Fireworks on WNUV-TV and a local forum on housing issues on WSTR-TV. The ABRY stations also have sponsored many nonbroadcst events in each of their markets and provided related on-air promotions. These events span the spectrum of community needs, and include programs to encourage reading and discourage drug use.

The NPRM identifies several structural changes to the television ownership rules that may facilitate competition in the video marketplace and lead to increased choice for viewers. The Commission seeks comments on changing the national ownership limits, the duopoly rule and the radio-television cross-ownership rules. With regard to the current Grade B contour duopoly rule, the NPRM identifies several options: changing the prohibited overlap from a Grade B to a Grade A contour; permitting co-ownership of UHF/UHF single-market combinations; permitting co-ownership of UHF/VHF single-market combinations; and permitting co-ownership of any two stations in a market where one of the stations operates on a UHF channel and a minimum number of separately owned television stations would remain after consummation of the proposed combination.

ABRY respectfully submits that these proposals would have dramatically different impacts on broadcasters. On the basis of the analysis provided herein, it is clear that permitting the common ownership of two local television stations in the same market is the _only_ proposal set forth in the _NPRM_ that offers any meaningful relief to the fundamental competitive pressures which currently confront the television broadcast industry. Moreover, the substantial relaxation of the duopoly rule is fully consistent with the Commission's competition and diversity goals, goals which require that free over-the-air television remain a vital force in the delivery of video programming.

II. The Substantial Relaxation of the Duopoly Rule Offers Greater Potential Economic Efficiencies Than Any Other Proposal Under Consideration.

There is no dispute that television broadcasters, particularly UHF stations, must adapt to survive in the multichannel video marketplace. Stations face decreasing viewership and advertising revenues, marginal profitability and competitive pressures from multi-channel media with dual revenue streams. They will need to make substantial capital expenditures for digital and HDTV transmission systems and to keep pace with other technological advances. The NPRM correctly notes that the common ownership of co-located facilities "hold[s] promise for the greatest economic efficiencies." _NPRM_ at para 17.

Stations could gain, at best, marginal operating efficiencies from the adoption of a Grade A overlap standard. In contrast, ownership of two stations in a market provides a number of opportunities for cost savings. The dramatically different impacts of these alternatives is analyzed in the following tables. Table 1 sets forth the yearly cost structure of a typical independent television station in the 30th market. For point of reference, KSMO-TV operates in the 30th market.

TABLE 1
ANNUAL EXPENSES FOR STAND-ALONE STATION

Program License Fees	$2,500,000
Production & Operations	800,000
Promotion & Advertising	800,000
Sales	1,325,000
General & Administrative	800,000
Total Operating Expenses	$6,225,000

The potential economic efficiencies that a broadcaster could realize from operating two stations in a market are as follows:

TABLE 2
ANNUAL EXPENSES FOR CO-OWNED STATIONS

	Single Station	Co-Owned Stations	
Program License Fees	$2,500,000	$4,500,000	(1)
Production & Operations	800,000	1,000,000	(2)
Promotion & Advertising	800,000	1,200,000	(3)
Sales	1,325,000	1,600,000	(4)
General & Administration	800,000	1,200,000	(5)
Total Operating Expenses	$6,225,000	$9,500,000	

(1) $500,000 savings derived from reducing wastage of unaired program episodes by being able to shift certain programs between two stations.

(2) $600,000 savings from shared production and operations, including commercial production, maintenance, and engineering.

(3) $400,000 savings from shared internal promotion infrastructure and greater purchasing scale for external media.

(4) $1,050,000 savings from use of single salesforce to sell both stations' commercial inventory.

(5) $400,000 savings from reduced overhead, i.e., accounting office to serve both stations, one office building, utilities, etc.

As illustrated in the above example, the cost of operating two stations in combination is approximately $3,000,000 less than the cost of operating the two stations separately, a significant 24% efficiency savings.

In contract, the efficiency savings resulting from the relaxation of Grade B signal overlap standard to a Grade A standard is negligible.

TABLE 3
ANNUAL EXPENSES FOR CO-OWNED STATIONS WITH GRADE B OVERLAP

	Single Station	Two Stations	
Program License Fees	$2,500,000	$5,000,000	(1)
Production & Operations	800,000	1,400,000	(2)
Promotion & Advertising	800,000	1,500,000	(3)
Sales	1,325,000	2,500,000	(4)
General Administration	800,000	1,400,000	(5)
Total Operating Expenses	$6,225,000	$11,800,000	

(1) No savings because programming is licensed separately on a market-by-market basis.

(2) $200,000 savings from sharing of supervisory roles is possible. Some operations staff is required onsite in each market.

(3) $100,000 savings from some sharing of supervisory roles may be feasible. Promotion is developed by individual market and purchased on the media in that specific market.

(4) $150,000 savings from some sharing of management and regional sales representation might be realized. A local salesforce is required for each individual market, as is the acquisition of the syndication sales research tools.

(5) $200,000 savings could be realized from some management and administrative sharing. Two facilities would be required.

As shown above, three would only be a 6 percent economic efficiency if prohibitions on Grade B overlap were relaxed to Grade A, i.e., combined annual expenses of $11,800,000 versus $12,450,000 for two separate stations.

Cost structures vary somewhat at different types of stations. An affiliate would have lower licensing fees because the network provides large amounts of programming at no cost. However, an affiliate would have production and operation expenses approximately four times as large as an independent as a result of its significant news commitment. As a result, the potential synergies from an affiliate/independent merger are great. Such a combination would enjoy the cost efficiencies identified above. It would also permit the sharing of these large, mostly fixed news production costs to provide news and more public affairs programming at each station.

Smaller market stations also would benefit from the efficiencies of combined operations. Although program license fees are somewhat lower, most other operating costs in smaller markets are close to the levels used in the examples above. For example, the costs of a news van in the 100th and 30th markets are approximately the same. With comparable annual expenses, the efficiencies of co-ownership would also be approximately the same, i.e., 24 percent. The bottom line impact could be substantially greater in smaller markets where the combination of smaller advertising bases and high fixed expenses have made a majority of stations unprofitable.

In contrast, an expansion in national ownership limits can produce efficiencies over a relatively small portion of a station's total cost structure. Although group owners can realize some benefit from national programming purchases, programming accounts for only 30 to 40 percent of station expenses of a UHF-independent, and a substantially lesser portion of a VHF affiliate's cost structure. With consolidation, corporate-level overhead could be amortized across a larger base of stations. However, these gains would be extremely modest, since corporate staffs are traditionally quite small.

Moreover, the number of group owners that would potentially take advantage of this flexibility is, frankly, infinitesimal. The ability to own twelve stations is rarely a material consideration in long-term strategic planning. In this regard, perhaps the most telling fact is that few, if any, group broadcasters presently own twelve television stations. In short, a change in national ownership limits is unhelpful to improving the competitive situation of the television broadcast industry.

Effective relief must target a station's major cost elements. As shown above, <u>the bulk of a station's costs are expended locally and can only be economized locally</u>. The relaxation of the duopoly rule to permit VHF/UHF and UHF/UHF combinations is the only effective prescription for enhancing the ability of television stations to compete in today's, and tomorrow's, multichannel video environment.

III. THE PUBLIC WILL REALIZE SUBSTANTIAL BENEFITS FROM THE <u>ELIMINATION OR SUBSTANTIAL RELAXATION OF THE DUOPOLY RULE</u>.

As shown above, permitting common ownership of two television stations in the same market is the only proposal identified in the <u>NPRM</u> which directly addresses the industry's need for economic relief from the effects of multichannel audience fragmentation. The critical question, therefore, is whether this approach may be harmonized with the Commission's core multiple ownership concerns of diversity and economic competition.

As a preliminary matter, the Commission must recognize that the proliferation of video outlets has substantially lessened the need for structural regulations which promote diversity. This rulemaking proceeding and the uncertain economic environment in which television broadcasters now operate are evidence of the success of the Commission's regulatory regime and the impact of technological advances in expanding video programming choice. More than half of all households now receive ten or more over-the-air television signals and cabled homes (over sixty percent of all television households) receive at least 30 channels. Moreover, this trend will certainly continue into the future as newer multichannel video providers such as wireless cable, home satellite dish systems and telephone company-provided video dialtone gain larger market shares.

The proliferation of video outlets is undeniable. The ability of over-the-air television stations to compete in this environment is an issue which the Commission is less certain . Accordingly, the primary focus of this proceeding must be to assess whether the current prohibition against same-market combinations is consistent with the Commission's avowed goals of fostering an economically competitive video marketplace and maintaining a viable free over-the-air TV broadcast system as an alternative to cable TV. When measured against this standard, it is clear that the current duopoly rule disserves the television viewing public.

A. Co-ownership Will Promote Locally Produced News, Public Affairs and Sports Programming.

The public would derive substantial benefits from permitting same market UHF/VHF and UHF/UHF combinations. This rule change would encourage locally produced programming. It will create programming flexibility, allowing over-the-air television to broadcast more hours of news and other types of non-entertainment programming which the Commission has historically viewed as central to each station's public service obligation.

Enhanced efficiencies from combined operations will help counterbalance increasing revenue fragmentation and escalating licensing rights fees. In many cases a station's ability to continue to produce news and public affairs programs is necessarily tied to achieving fundamental changes in its cost structure.

Broadcasters could realize powerful synergies from UHF-VHF combinations. (In most contexts "UHF" and "independent" are synonymous. Except in the top 10-15 markets, most independent stations are on the UHF band.) A VHF-affiliate could take its existing news facility and create a one-hour 10 p.m. (E.S.T.) nightly news on its UHF partner. This would create 365 additional local news hours for the viewing public. It also would allow more in-depth reporting on local issues which is possible only within an hour-long format. This type of programming is generally precluded by the typical VHF-network affiliate's half hour new broadcast. If operated as separate entities, the VHF-affiliate would be prohibited from preempting 365 network hours and the UHF-independent would be unable to afford to produce such programming. The VHF's existing news and sports departments also could produce additional public affairs and sports programming for the UHF stations, which tend not to produce such programming as a result of the related costs.

UHF/VHF combinations also could help slow the migration of sports programming to cable. A VHF station could avoid excessive network preemptions by telecasting most of its games on its UHF partner. A UHF/VHF combination would be able to bid more competitively against cable on sports programming. As a result, a substantial relaxation of the duopoly rule would help restore local sports programming to free over-the-air television.

B. The Relaxation of the Duopoly Rule Would Encourage the Establishment of New Television Stations in Markets Presently Too Small to Viably Sustain Additional Over-the-Air Stations.

The NPRM seeks comments on whether the Commission should permit the combination of any two stations where one is a UHF station and a minimum number of separately owned television stations would remain after the proposed combination. Adoption of such a proposal may well deny additional programming options in mid-size and smaller markets where the public would derive the greatest diversity benefits from an additional over-the-air viewing option.

The 50th market has yearly net television revenues of between $40-45 million. Market revenues fall off rapidly as one moves from the 50th market to the 200th market. At around market 50, it becomes infeasible for a 5th television station to be economically viable. Today, the annual operating expense of a 5th station in the 50th market is about $4,225,000 (the $3,725,000 in operating costs discussed above, plus a smaller program license expense of about $500,000).

In order to break even, this station must capture 10-11 percent of market revenues. This is an unrealistic figure. Typically, a 5th station/UHF-independent achieves audience shares of only 5-7 percent. Moreover, breaking even does not repay the millions of dollars of capital costs or early period start-up losses. Such a scenario creates a financial disincentive for investment capital to start up or buy a fifth station independent in the market. (These economic disincentives also apply to larger markets where although market television revenue is higher, there are more than five televisions stations.)

The situation would be fundamentally different if the Commission substantially relaxes the duopoly rule to allow UHF/VHF combinations in smaller markets. Consider, for example, the implications of one of four existing stations in the 50th market starting up or buying the 5th station. From the existing stations' perspective, the incremental operating expense is not $4,225,000, but less than $2,000,000.* Such a station would only need to capture a 4-5 percent market share to remain a viable free programming source. Such an economy of scale would attract investment capital and at the same time maintain or create additional program diversity.

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* In the example discussed above, the annual operating expense before programming of one station is $3,725,000. The additional expense to operate a second combined station, before programming, is $1,275,000. When annual programming expenses of about $500,000 is added, the incremental annual cost of a second station in the 50th market is about $1,775,000.

Many UHF stations currently experiencing economic hardships in today's multichannel environment would be given a second chance if allowed to operate in tandem with a stronger VHF-affiliate station. The FCC should give the free market system the flexibility to create additional programming options for mid-size and small markets.

C. Permitting UHF/VHF and UHF/UHF Combinations Will Help Ensure That UHF Stations Continue to Supply A Separate Source of Programming.

In the current economic environment the long-term viability of many UHF stations is, at best, questionable. The advent of digital transmission systems and HDTV is drawing closer. Television stations face significant short and long-term capital expenditures. Although VHF stations are typically better capitalized, neither VHF nor UHF stations are financially prepared to deal with the technological revolution that will transform the television broadcast industry during the next few years.

Experts anticipate that implementation of digital and HDTV transmissions will first occur on cable and then on broadcast television. Since local cable systems can draw on a deeper and more diverse revenue base, they will be able to much more readily make the capital investments necessary to compete in tomorrow's multichannel environment.

Co-owned local stations will be able to retrofit their facilities with multimillion dollar digital and HDTV equipment because they will have the ability to realize significant economies of scale. Importantly, even stations that do not consolidate operations will be able to finance these purchases on the basis of enhanced station assets that reflect their ability to merge with a VHF station in the market.

Several commenters have questioned whether ownership rule changes which are appropriate for a "highly fragmented" radio industry are necessarily advisable for the television industry. Obviously, each such change or proposed change must be carefully evaluated on its own merits. However, it is very important to recognize that the seriousness of fragmentation is determined not solely by the number of viewing or listening options, but also by the size of the fixed expenses required to sustain a particular service.

In returning to the above example of the 30th market, the annual cost to operate a UHF-independent is approximately $6,275,000. The cost to operate an AM station in the same market is approximately $500,000. Because the fixed expense of a UHF-independent is twelve to thirteen times greater than for a AM radio station, fragmentation of viewership and revenue streams have a more devastating impact much earlier in a station's life in the television world. Accordingly, it is important not to measure fragmentation solely by a numerical count of competitors, but to also take into account the much larger underlying cost structures. It is clear that fundamental regulatory changes are necessary to preserve a competitive and vital video marketplace.

CONCLUSION

Revision of the duopoly rule to allow VHF/UHF and UHF/UHF combinations is of paramount importance to the survival of the television broadcast industry as well as to the goal of preserving diversity for the viewing public. Such a rules revision will play a significant role in encouraging the production of new, diverse, and locally-produced programming as well as providing broadcasters with the economic tools needed to meet today's technological Renaissance. Broadcasters can and will survive in today's and most likely tomorrow's multichannel environment. All we ask is that our hands be untied.

Respectfully submitted,

ABRY COMMUNICATIONS

By: ____________________

Howard M. Liberman
Peter H. Doyle
ARTER & HADDEN
1801 K Street, N.W.
Suite 400K
Washington, D.C. 20006
(202) 775-7100

Its Attorneys

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